

TAX POLICY DIRECTIVE #6

June 1992

Purpose: Tax Policy Directives are intended to provide the general public with information concerning the Department's official position in regard to a specific issue. These directives may be relied upon by taxpayers until superseded by another policy directive, a change in statute or regulation, or a court decision that would render the policy directive void.

Subject: Apportionment Computation For Unitary Businesses

References: I.C. 6-3-2-2 (d) & (e), I.C. 6-8.1-3-3

Unitary Returns

Taxpayers who have petitioned and received permission from the Department to file combined/unitary returns in Indiana may file one return for the unitary group, providing a schedule is attached showing the gross income tax due and adjusted gross income tax due by member. In the alternative, the unitary group should file an Indiana return for each member doing business in Indiana.

The basic premise in filing combined/unitary returns is that all activities carried on by separate entities are part of a single unitary business (one taxpayer). Under the "Finnigan" concept a taxpayer is defined to mean all corporations (members) of a unitary group. This directive clarifies, but does not change the Department's position and stresses that in the interest of consistency the Department follows the decision of the California State Board of Equalization in the Appeal of Finnigan Corporation (Finnigan), Cal. St. Board of Equal., Jan 24, 1990 (88-SBE-022A). This decision only applies to corporations who file unitary/combined tax returns in Indiana and does not apply to corporations not filing combined returns in Indiana. The application of this California decision requires a change in the computation of the Indiana apportionment factors.

Apportionment Computation

Under Finnigan, sales made by a member of the unitary group to a destination in another state in which that member was not taxable should not be “thrown back” to Indiana unless no member of the unitary group was taxable in the other state. The Indiana property, payroll and sales of all corporations within a unitary group will be taken into account in apportioning unitary business income to Indiana. This includes property, payroll, and sales attributable to entities that are not subject to Indiana taxation under 15 USC Section 381 (P.L. 86-272). The total business income apportioned to Indiana will then be assigned among the individual corporations taxable in Indiana. Each taxable corporation is assigned a share of the business income according to its relative share (it’s percentage share without considering the nontaxable members’ share) of the unitary groups’ Indiana property, payroll and sales factors.

EXAMPLE

Corporations A, B, C and D are engaged in a unitary business. Corporations A, C and D are taxable by Indiana, but Corporation B is exempt from taxation in Indiana under P.L. 86-272.

The basic computation necessary to determine the amounts of business income apportioned from Indiana sources attributable to Corporations A, C and D are reflected in the attached example.

CONCLUSION

The adoption of Finnigan only applies to corporations who file unitary/combined returns in Indiana. This is a change in the method used to compute the Indiana apportionment factors only and not a tax on entities who do not exceed mere solicitation as defined in P.L. 86-272. The development of a relative formula percentage is an integral part of the overall computation and should not be omitted. Corporations not filing combined/unitary returns in Indiana will continue to apply the throwback sales rule in the normal fashion.



Kenneth L. Miller
Commissioner, Indiana Department of Revenue

Combined Apportionable Business Income

	Corp A	Corp B	Corp C	Corp D	Combined
Adjusted Gross Income	150,000	1,600,000	100,000	100,000	1,950,000

Apportionment Factors (All figures in \$1,000's)

	Total	Within Indiana				Total
	Everywhere	Corp A	Corp B	Corp C	Corp D	Indiana
Property	13,000	650	---	350	---	1,000
Payroll	4,700	700	50	300	150	1,200
Sales	114,500	3,500	10,000	2,000	500	16,000

Combined Indiana Apportionment Formula

Property Percentage	4.81	---	2.59	---	7.40
Payroll Percentage	14.89	1.06	6.38	3.19	25.52
Sales Percentage	3.06	8.73	1.75	.44	13.98
Total					46.90
Average					15.63

Business Income Apportioned to Indiana

(15.63% times 1,950,000)	304,785.00
--------------------------	------------

Relative Formula Percentage Calculation

Property	4.81%	N/A	2.59	---	7.40
Payroll	14.89%	N/A	6.38	3.19	24.46
Sales	<u>3.06%</u>	<u>N/A</u>	<u>1.75</u>	<u>.44</u>	<u>5.25</u>
Total Percent	22.76%	N/A	10.72	3.63	37.11
Average Percent	7.59%	N/A	3.57	1.21	12.37
Relative Percent	61.33%	---	28.89%	9.78%	100.00%

	Corp A	Corp B	Corp C	Corp D	Total Income
Business Income Apportioned To Each Indiana Taxpayer	186,925.00	-0-	88,052.00	29,818.00	304,785